



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION
OF NEW HAMPSHIRE, LOCAL L984,
S.E.I.U.

Complainant

v.

STATE OF NEW HAMPSHIRE
UNIFIED COURT SYSTEM

Respondent

CASE NO. S-0391

DECISION NO. 96-067
(On Rehearing)

APPEARANCES

Representing State Employees Association:

Michael Reynolds, Esq.

Representing the Administrative Office of the Courts:

Elizabeth Hodges, Esq.
Christopher P. Reid, Esq.

Also appearing:

Jeffrey D. Smith, N.H. Judicial Branch
Kathy J. Duval, State Employees Association
Heidi Ayer, State Employees Association

BACKGROUND

On December 13, 1994, the State Employees Association (Association) filed a petition to certify a bargaining unit of twenty-six court reporters and stenographers. On December 27, 1994, the New Hampshire Unified Court System filed its exception to the Petition for Certification and a Motion to Dismiss. The matter was heard before the Board on February 16, 1995, at which

time no testimony was offered as it was agreed between the parties that their differences centered on a question of law. The record was held open for submission of Memoranda of Law which were received on March 15, 1995. Subsequently, legislation was introduced in the New Hampshire House of Representatives which would have disposed of the question. Final legislative action was taken on July 3, 1995, and was not dispositive of the question of whether or not court employees are "public employees" for the purposes of RSA 273-A, the Public Employee Labor Relations Act. Accordingly, the PELRB then issued Decision No. 95-64 on September 15, 1995 which held, by a vote of 2 to 1, that employees of the judicial branch of government, who otherwise qualify as public employees under RSA 273-A:1 IX, are eligible to organize a bargaining unit to negotiate with representatives of the New Hampshire Unified Court System.

On October 13, 1995, the Court System filed both a Motion for Rehearing and a Motion to Defer Ruling on Motion for Rehearing. By letter of October 19, 1995, the Association agreed to a maximum deferral of 120 days on the Court System's Motion to Defer Ruling. On November 8, 1995, the PELRB issued Decision No. 95-106 which granted the foregoing deferral for 120 days and told the parties that, at the expiration thereof, either of them may request the PELRB to make a ruling on the Motion for Rehearing. By letter of January 22, 1996, Christopher Reid, Esquire, on behalf of the Court System, requested a ruling on that motion at the expiration of the deferral.

On April 25, 1996, the PELRB issued Decision No. 96-025 which granted the Motion for Rehearing, limited to newly discovered evidence post-dating the parties' submission of briefs on March 15, 1995, said briefs forming the basis for Decision No. 95-64. The rehearing was held by the PELRB on June 11, 1996 with the record being held open until July 10, 1996 for the submission of written memoranda. The Association filed its memo and a motion to dismiss for lack of newly discovered evidence on June 11, 1996. The Court System notified the PELRB by letter of July 10, 1996 that it had determined that it was not necessary to file further memoranda.

FINDINGS OF FACT

1. Findings of fact 1 through 6, inclusive, of Decision No. 95-64, dated September 15, 1995, are reiterated and affirmed.
2. The proceedings of June 11, 1996, were, by design of the parties, limited to oral arguments presented by

the respective counsel.

3. Counsel for the Court System made limited oral argument and emphasized that the judicial branch has its own personnel rules, i.e., it does not utilize the same personnel rules as apply to executive branch employees. Those rules were adopted by the Supreme Court on March 4, 1996, well after the filing of the certification petition on December 13, 1994. The need for those rules was mandated by the Legislature which also controls such matters as the rate of pay and the authorized number of employees who are the subjects of the pending certification petition.
4. Counsel for the Association made limited oral argument and emphasized that the employees who are the subjects of the pending certification petition perform complicated clerical functions, not unlike complicated clerical functions performed by some organized employees of the executive branch. In this capacity, they exercise no discretion or judgmental functions which would identify them with the judicial branch compared to similar, but not necessarily identical, functions accomplished by certain executive branch employees. He argued that no distinction should be drawn from the authority under which the personnel rules for the judicial branch employees were promulgated, noting that the personnel rules for executive branch employees were adopted under RSA 21-I, not RSA 273-A, and there is no dispute over the extension of collective bargaining rights to those employees under the provisions of Chapter 273-A. Counsel's memorandum also referenced HB 2, later passed as Chapter 308 of the Session Laws of 1995. In sections 106 and 107 of the early drafts thereof, it defined out or eliminated persons employed by the legislative or judicial branches of state government from being "public employees" within the definition of RSA 273-A. Since the legislation was never passed with the newly defined exclusions included, Association counsel argued that there is contemporary legislative intent that employees of the legislative and judicial branches of state government should be subject to coverage under Chapter 273-A.

DECISION AND ORDER

We are not persuaded by the arguments made or the briefs submitted as the result of the rehearing that there is cause for us to depart from our initial decision, by a vote of two to one, in this case on September 15, 1995. Decision No. 95-64. We maintain, by that majority, that the court reporters/stenographers of the Court system are entitled to the rights and privileges conferred on all public employees by RSA 273-A.

Chapter 273-A is broadly based enabling legislation. It defines "public employee" as "any person employed by a public employer" and then proceeds to state certain exceptions. RSA 273-A:1 IX. Neither the Court System nor the job functions performed by the petitioned-for employees is one of those specified exceptions. Additionally, at RSA 273-A:1 X "public employer" is defined as "the state and any political subdivision thereof..." There is no limiting language confining Chapter 273-A to the employees of the executive branch of state government. When the legislature was considering a change to so limit the coverage of Chapter 273-A in 1995, it chose not to do so.

Accordingly, we ratify and confirm our findings and conclusions of Decision 95-64 without modification or reversal.

So ordered.

Signed this 15th day of AUGUST, 1996.


EDWARD J. HASELTINE
Chairman

By majority vote. Members E. Vincent Hall and Richard Roulx voting in the majority, Chairman Edward J. Haseltine voting in the minority.

Chairman Haseltine maintains his dissent as stated in Decision No. 95-64.